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Next Result

oislaw Federal District Court Opinions.

TRAN ∢. WASTE MANAGEMENT, INC., (M.D.Fla.2003)

Plaintiff ORLANDO, TRAN, s a INC -SVthe WASTE MANAGEMENT, Personal and WILLIAM DOUG Representative FRAVEL, INC.; O fi CLARK EQUIPMENT jointly the Estate and 0f ល everally, COMPANY; NO VAN

Defendants

Case No. •• 6:03-cv-127-Orl-22JGG

Uni œd. States Distri Ω \Box Court, ⊠. Ü Florida

July 18, 2003

ORDER

District Judge

INTRODUCTION

HUONG THI

NGUYEN, Pla

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d D No. AFFIRMS (Doc. No. has 49 and the OVERRULES ξ'n expired. Having and 44), 50 respectively) Defendants' Objections ADOPTS 2003. and a memorandum of the The Judge Objections Plaintiff reviewed the Glazebrook's to the (Docs. has Report law in support thereto Report not responded, No. well-reasoned and Recommendation 49 (Docs. and Recommendation (Doc. βŋ 50), No. thereof and the and 49 β'n (Doc. time 50), for No. doing 51)

memorandum opinion (Doc. No. 44).

HH. BACKGROUND

Mage Management, Nguyen ("Mr. Florida, [fn1] and is the rincipal place of business located in the Defendant, Bobcat of Orlando, principal its principal place Plaintiff, Inc. ("Waste Management Van Nguyen"),[fn2] her husband.[fn3] The Defendant, place of business located Clark Huong Equipment Thi Tran, personal representative of the Estate of business Company, დ Ի-Inc., Corporation"), is a Texas മ located in the State citizen of the ა പin the State დ Ի-State of a Florida a Delaware Florida.[fn6] The corporation with State of New Jersey. [fn5] corporation with of Texas.[fn4] 0f Waste of No corporation ĊŢ

Defendant, Winder of Flor of an industration industration of Flor of F industrial of Florida.[fn7] This action is William Doug vehicle Fravel collision occurring ("Mr. for personal injuries arising Fravel"), is in Orange മ citizen County, O

Material sorter, Mr. Van Nguyen was Haivision of the Waste Management Corporation.[fn10] In his oader pushed the cardboard onto a conveyer September America of Orange County ("Recycle America"),[fn9] a 0 f 2000, sorting duties were completed, in order to remove contaminated materials.[fn11] Mr. where Van the cardboard Nguyen was responsible for sorting through employed belt, was baled.[fn12] which inserted the ឧន g Bobcat capacity Skid as sort Ste

That derivative in the cardboard recyclables in common with that the cardboard into a bailer, we consider pushed the cardboard and into a bailer, we consider a bout september 27.

A D on or about september 27.

A D on Skid Steer Loader into his instantly.[fn14] It force cardboard, 27, trauma to 2000, ը, while Mr. person.[fn13] As a his apparent his head and supervisor, Van Nguyen was that the Mr. chest, result, Mr. Cla Fravel, sort ing

Skid Steer Loader.[fn15] Bobcat

of Orlando,

Inc and

. ("Bobcat"),

ıs a

manufactured

assembled,

("Clark") designed,

Che Count Corporation; [fn18] Count 768.16-768.27. **[fn17]** itnes strict Defendants connection with that accident, and merchantability action for intentional negligence against against Mr. Fravel; [fn19] Count III liability pursuant to of action for strict Clark.[fn16] cause Count I of the First Amended Complaint alleges product II alleges O H Florida's action defects മ for the cause liability against Wrongful Death Act, against breach Plaintiff 0f alleges a action for Clark; [fn20] Count О Н implied filed the Waste Management cause Bobcat; [fn21] gross Ф warranty Fla. lawsuit Stat agains (O)

August 20, 2002.[fn23] against Circuit Court, Bobcat.[fn22] The lawsuit was in and for Orange County, filed Florida in the ("the Ninth Judicial state court")

4818 Te ge the Florida court d d citizens Plaintiff and two of the Defendants, Mr. Fravel and January t 0 pursuant to the United of the 31, 2003, State 28 U.S.C. § 1441[fn24] and 1446.[fn25] Although States Clark regard, the of Florida, District filed മ Court Petition removal was Petition for the for for based Middle Removal Removal g Bobcat District from states diversity the S D Of f Ø

wurisdiction.[fn26] In that collows:

Although Plaintiff and

Casasa: 0797ve009964845DJMVKEAJDodDorocmt 2n17-2 this purposes of diversity. [fn27] clause of Although Plaintiff WILLIAM DOUG FRAVEL has been fraudulently Exclusive Statute § FRAVEL is America of Defendant, NO VAN NGUYEN working at Recycle material hereto, was a co-employee with the DOUG FRAVEL are his citizenship should be disregarded FRAVEL has been fraudulently case is nonetheless action against Remedy. Because 440.11, Workers Compensation entitled to protection under Florida Orange WILLIAM DOUG FRAVEL, at both citizens County . and Defendant WILLIAM DOUG FRAVEL[,] removable of the Plaintiff cannot state WILLIAM State of WILLIAM joined. because WILLIAM times DOUG DOUG Florida for the joined מ

INC., ORLANDO, BOBCAT OF ORLANDO, case ORLANDO, Although raudulently joined disregarded for is nonetheless removable BOBCAT OF ORLANDO, a cause of action against BOBCAT OF ORLANDO loader INC., has been fraudulently joined.
F ORLANDO, INC. did not sell the sub INC., are Plaintiff diversity purposes. [fn28] both citizens and Defendant, Because [and] INC. has it s Plaintiff citizenship because of Florida, BOBCAT been cannot the subject BOBCAT OH OH should OH H this

no fraudulent state February 24, court on the joinder 2003, the grounds that and the Plaintiff removal was filed defective a Motion to because Remand there to the was

8 diversity jurisdiction. [fn29] Oral argument Defendants ssued 2003, [fn30] and United മ Report failed to meet the burden of and Recommendation States Magistrate g Мау establishing g Judge James G. 27, the 2003.[fn31] motion federa Ιn was Glazebrook std held g

Motion be memorandum opinion, Defendants Ninth Judicial granted, failed to Circuit and that Judge Glazebrook show "any in and this fraudulent joinder."[fn32] case for recommended that Эď Orange remanded to County, Florida the the Circuit Plaintiff's because Court the 0f

and Clark Equipment recommendations.[fn33] This Court must Mou Company, consider Objections the Defendants', to Judge Bobcat Glazebrook's 0 H Orlando Inc

III. ASSIGNMENTS O FI ERROR

db db In their Object secommendation, whey argue that **2020** age vide **e**valuating their Objections allegations that Judge Glazebrook "failed to Plaintiff's Motion the 0 Defendants Plaintiff to Magistrate s Complaint for Remand, assign four Judge instead Glazebrook's because points apply O f ΟĦ he the correct standard the considered only error.[fn34] First Report totality О Н the

And finally, the final state of Regarding whether argue **40.11**(1) . . . failed to vidence that Judge Glazebrook "failed to make before him."[fn35] Second, they argue that evaluate 9 they Off. and [relevant] deposition testimony."[fn36] Third, have Clark's contesting argue Bobcat been grossly negligent whether a proof that of Orlando, either the Judge of fraudulent Florida Glazebrook Inc. was court allegations in light joinder."[fn38] any findings could "failed to fraudulently deem Judge Glazebrook in Clark's of Fla. defendant William hold joined Stat plaintif Petition they . "[fn37]

IV. STANDARD OF REVIEW

udge revie Hegardless magistrat solution is trict shat the hich sp bsence hat the district judge `give magistrate's specific review recommendations to which any 0 fi judge magistrate O Hi specific factual whether must legal objection has been made objections, there make judge findings objections മ issues de de fresh consideration to novo determination of are novo."[fn41] മ report party objects.[fn39] "This filed, is no by а and recommendation, However, party." മ requirement district the [fn40] "In the those judge findings that issues must മ require district to review

LEGAL ANALYS recommendations

made

Уd

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magistrate

judge . [fn43]

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novo.[fn42] After

objections,

THE LAW G H REMOVAL

http://www.loislaw.com/snp/fpopwind.htm (4 of 17)9/29/2005 1:51:29 PM Constitution and Congress limi 'n ω federal court's jurisdiction Áq

age

restricting the types of cases which the federal courts may hear. [fn44]

remand."[fn46] uncertainties because "[f]ederal courts courts presumption For this are to be strictly construed against removal. [fn45] In fact, reason, deral courts are of limited jurisdiction, . . against the exercise of federal jurisdiction, ន t 0 statutes authorizing removal of actions to removal jurisdiction are to be resolved . . there such that in favor federal

Page 10

Revertheless, a federal court shows the state of the stat gemove. [fn47] When the removing party fails to do so, remand is favored. removing party must present facts establishing its right to should of the right to a federal forum."[fn48] =be cautious about remand, lest

B. THE LAW OF FRAUDULENT JOINDER

defendant action was brought."[fn49] However, **d**efendant U.S.C. § 1441 "no defendant can be a citizen of the state in which is well established that was and retain diversity jurisdiction" if the joinder of fraudulent."[fn50] it is appropriate for a federal court for removal to be proper under "even if a named defendant is to dismiss such a that such the

Gircuit, joi Shere is no Against the ircuit, joinder has raud itizenship The doctrine of fraudulent joinder provides for an exception to the requirements of removal jurisdiction. [fn51] In the Eleventh resident (non-diverse) defendant; (2) when there possibility that the plaintiff been deemed fraudulent in three can prove മ situations: (1) when cause დ Ի. O H outright action

kage 11

resident share connection real the plaintiff's real connection to the claims against the nonresident shares no joint, defendants pleading of jurisdictional facts; and the several, or alternative liability with claim against the resident and (3) where defendant

Cause Witl allegedly fraudulent defendant; he need only have legitimate."[fn54] stating a state court possibility that a state With respect to the first court."[fn53] "The plaintiff of action against any one of must valid cause of action in order find that the joinder was proper and remand court would find that type need not of fraudulent joinder, "if there the resident defendants, the for the have winning case joinder the complaint states a possibility the to case Ьe against O H federal

plaintiff determining "whether and must the factual resolve allegations the case should be any uncertainties 'n, the light about remanded, most state the district favorable substantive ţo court law

Result #17: Loislaw Federal District Court Opinions - TRAN v. WASTE MANAGEMENT, INC., (M.D.Fla. 2003) 0f the plaintiff.[fn55] A federal court should

the deposition transcripts submitted by the time "these Off. determinations based on the removal; but the court may [also] consider plaintiff's pleadings parties."[fn56] affidavits and

ther words, a ... there words, a ... the plaintiful physical property fraudulent () age 13 the jurisdict: determining whether it ruling resolving a urisdiction before "embarking he merits." დ 円gon important courts jurisdictional inquiry must not motion for summary judgment claim of [fn58] As such, "[w]hen considering a motion to remand, plaintiff's "district are not t 0 Indeed, fraudulent or frivolous note t o ე. ე. court's weigh the merits claims must that "[w]hile an arguable federal upon a joinder authority to look claims."[fn60] courts Ьe one under state law."[fn59] safari in under Fed.R.Civ.P. ը՝ the limited subsume of a must similar proceeding be plaintiff's search of t 0 substantive t 0 into the certain of thei checking that appropria Ф used **56**(b) ultimate claim beyond judgment for 4 9

Filedett "On a motion defeat issue joinder of non-diverse 0f removal diversity."[fn61] "It to remand also rests the resident on the removing party bears follows that removing defendants party."[fn62] the Was burden of the burden മ fraudulent proving attempt proof

0 APPLICATION

Fraudulent Joinder of. Mr. **Fravel**

That joi defea on the Factorian the position of the position o Sompensation Act provides as age 0 xceptions In this instance, an employee or death arising out parties Compensation tο Mr. Travel's who acts, with dispute the Act the parties affords immunity. fact this follows: that do not dispute the industrial vehicle Mr. In that regard, Fravel there "[immunity] shall not are immunity several recognized fact that collision.[fn63] the Workers from liability эd applicable Florida Nor

The tatute, term requires negligence, the following: S O †t Ø used in that

sespect to Improvoked Such acts r

njury

death."[fn64]

result

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employee, with willful

and wanton di

aggression or with

gross such acts

negligence

when sregard

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present danger existence First ogether 0f all, 0 f constitute മ gross negligence presupposes composite amounting an imminent О Њ to more circumstances 0 K than normal clear which, and

Result #17: Loislaw Federal District Court Opinions - TRAN v. WASTE MANAGEMENT, INC., (M.D.Fla. 2003) willful or wanton disregard thereof (as danger distinguished complained chargeable conscious disregard of spoken of. And thirdly, simple O Fa knowledge or awareness must peril from a careless disregard thereof negligence) or must occur be predicated on . Secondly, consequences, in a from the more manner which evinces the act മ of the imminent gross showing ജ or omission üŢ O.f. extreme

culpable

or criminal negligence).[fn65]

ettage 15 Gehicle Menountin Ware of Age inds ₱oremost, mounting to more than a normal and usual peril. eflects Applying not so obviously frivolous as to be considered that of the in reverse that it is plausible that Mr. the the imminent danger spoken. it is within the realm of possibilities that Mr. aforementioned standards to Plaintiff's constitutes action for gross an imminent Travel's operation of Specifically, Mr. the 9 negligence clear and present case at Second, fraudulent,[fn66] against Mr hand, this an industria the record Fravel danger Court Fravel was

ravel admitted to having seen Mr. Van Nguyen in the

immediate

In sum, "dr. laintiff's f. lai 'he Ficinity prior Conscious disregard ossibility that a collision could have occurred in such a manner action against and this case "drawing all favor plaintiff', [fn68] this t O and then resolving all contended the collision.[fn67] And state 0 H must the reasonable Mr. court would find that the consequences. be remanded Fravel. [fn69] As such, Court finds that inferences from for finally, lack of subject there į.t the record complaint there თ თ issues ٠. to . Ω გ ეfeas is a evidenc no of fact matt sible in. states raudulent the D

Woinder, and this continuisdiction."[fn70]

Since this Court

Coined, it is unnectage 16

In her Motion to unnecessary has determined to address that Mr. whether Fravel Bobcat was ი ე not മ proper fraudulently party.

. U ATTORNEY SEBA

was payment of incurred as pursuant costs In her Motion to Remand, totally under that of just costs and any actual expenses, including attorneys fees to an order without this section a result 28 U.S.C. § 1447 (c) remanding merit."[fn71] That provision of the . ეthe g within the removal."[fn72] "Whether മ the Plaintiff case grounds to the Court's seeks that state sole provides, attorney fees and Clark's court to award discretion." "removal "may in pertinent require '[fn73] and cost

lacking the <u>=</u> Middle showing District 0f bad O Hi faith is Flori _da, not where necessary subject S D matter മ predicate jurisdiction t 0 the L'S

17 O H attorney's fees [under

t 0 28 U.S.C. § 1447 (c)]. "[fn74] Rather, improper reimburse removals."[fn75] plaintiffs who have the incurred "intent 0 f expenses the statute in attacking ი H-

depurisdiction, such the deposition of the deposition of the description of the ultimated heads and the deposition of the ultimated as a result of the deposition of the depos Celative ease presented in been subject In in this good matter ease case, obviously the case, faith, ultimate such that that in the jurisdiction.[fn76] In in favor of although the the Notice was remand Notice was patently fraudulent the presumption against the merit a11 the remand, [fn77] and uncertainties O filing context the 9 improper because 0 f fact, it plaintiff's claims "the district frivolous the S D improper Eleventh Circuit Notice can to removal jurisdiction claims."[fn78] ЭĞ 0 f court's exercise considering stated with this Removal must Court authority precedent О Н bе may federal lacks limited the facts have are to

entitled costs Court result t o and recover finds 0 Hi any the removal.[fn79] that actual from the ე ე expenses, മ Defendant, matter including Οfi the fairness", Clark attorneys Equipment

VI. CONCLUSION

the foregoing, ήt μ. Ø ORDERED that

- Pased on the modern Based on the composition of the Domest I. The Defendation Report 2. The Defendation Report 3. United Stepport and Recomposition Report and Recomposition Report and Recomposition Report and Recomposition Rec Defendant's, Judge's on Remand (Doc. Proposed Findings Bobcat 0 f No. 49) Orlando, are OVERRULED and Recommendations Inc., June 13, 2003 Contained Objections
 - Defendant's, Judge's Report Clark Equipment and Recommendation on Company, June Remand 13, 2003 (Doc. Objections No. 50)
 - and Recommendation States Magistrate (Doc. No. Judge 44) James ռ Ի. **Ω** APPROVED Glazebrook's and Мау N 7 2003
- The Plaintiff's, Huong Thi Van Nguyen, February 24, personal representative (Doc. No. 10) დ |-GRANTED O fi 2003 the Tran, Motion Estate S S the († 0 0 f Remand No

Page 19

(d This Circuit this and for case remand Orange Court ა ე a. 11 including hereby **REMANDED** to 0f County, Florida. necessary steps the Ninth Judicial forwarding to The the മ effectuat certified clerk Circuit h T

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сору 0 H this Order t 0 that court

- and this actual improper This Court expenses, removal retains including jurisdiction attorney to fees, secur Ø incurred payment ಬ್ for മ the result just Of.
- (a) The Ηh effort ው ው Ø parties and ţ costs determine shall ţ ф ф confer the paid amount in ω good 0 fi attorneys faith
- (g attorney evincing attacking Costs Plaintiff the and parties fees a11 other shall this costs, expended fail improper appropriate submit t O actual in reach to this removal. connection expenses, documentation an Court agreement with and the O Hi
- (C) The 20 before Plaintiff Monday, July shall file 21, such Bil 2003. 0 H Cos 200

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(d) The respond shall Defendant, have to the until the Plaintiff's Monday, Clark July Equipment Bill 28, О Н 2003 Company Costs tο

ORDERED

1; 1446 Equipment see(Doc. also No. Company's Petition 2), for Notice ∞ a t Removal 2-3 Off. Removal Pursuant (Doc. to

Amended Complaint **В**е H ore Answer (Doc No ヒ

_ 닏 മ T N

Petition 1446 for (Doc. Removal No. 2), Pursuant 4 മ \Box t o N

PONE and ORDER

PONE and ORDER 1446 Equipment see also (Doc. Petition Company's Notice No. 2), for _ ω Removal р С 2-3 0f Removal Pursuant (Doc t 0

28 U.S.C. [fn6] See § 1441 Petition for and 1446 (Doc. Removal No. 2), Pursuant _ 9 മ \Box to W

De [fn7] ហ fens at 30 See 2; t 0 800 8 First the also Defendant First Amended Amended Complaint Travel's Complaint Before Answer (Doc. Answer and No (Doc Aff $\boldsymbol{\omega}$ irmat No ហ lve Ф rt \vdash

fn8] http://www.loislaw.com/snp/fpopwind.htm (9 of 17)9/29/2005 1:51:29 PM See generally First Amended Complaint Before Answer

(Doc. No. 4).

Equi a t [fn9] ipment See Company's id., _ 10 at 2; see Opposition noi: t o 18 Õ Motion Clark to Remand (Doc. No. \vdash . 5 , EX. \vdash

[fn10] Se Ō Н. Q _ ω and മ ĊΤ

See (Doc. No. Clark Equipment 15), Ex. 1 . H Company' at . H Ø Opposition t 0 Motion C†

dfn12] See id

fin13] See First Amend

Plant 13-14 at pp. 2-3; s

Opposition to Motion t

Opposition to Motion t

Memand (Doc. No. 15),

Momplaint Before Answer

fin15] See Clark Equip Amended to Remand (Doc. No. see also Clark Complaint Before Equipment . 15), Answer Company's 円 X (Doc. <u>.</u> a t No. ν. 4),

See Clark Equipment (Doc. No. 15), Ex. Answer (Doc. ۲ Company's a t No. 1-2; 4), see Opposition to also 14 a t First 2-3 Amended Motion to

-2 •bjection 51) at せの N Magistra Equipment tе Judge's Company's Repo: řt Memorandum in and ndum in Support Recommendation g O.f. Remand (Doc

nswer at No. 2; see and Affirmat See 7), First also N Amended Complaint at Defendant, ive Defenses N Clark to First Before Equipment Amended Answer Company's Complaint (Doc. No. 4), Вe fore Answer

No. See 4 generally First Amended Complaint Before Answe

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Count referred Implied Warranty Answer fn22] <. See (Doc. to as For the id. No. Count a t 4), the 0 H purpose 8 - 10.Fitness <. Ι'n 0 f Plaintiff misnumbered her the this and Merchantability First Order, Amended Complaint that cause თ თ 0 f claim Count action Before for ΛI instead will Breach р 0 f 0f

28 Remova [fn23] .S.C. on See (Doc. generally and No. 1446 1); (Doc. ClarkSee also No. Equipment 2) Petit Fir ion Company's is t for Amended Removal Notice Compla Pursuant O H בין. to

Before Result #17: Loislaw Federal District Court Opinions - TRAN v. WASTE MANAGEMENT, INC., (M.D.Fla. 2003) Answer (Doc. No. 4).

[fn24] Title 28 U.S.C. § 1441 (a) გა <u>b</u> provide ន្ត follows:

- under fictitious names shall be disregarded United States for the defendants, to the district court may be removed by the defendant or the of Congress, any civil Except State court United States have თ თ the For purposes of the place where otherwise of which the citizenship of expressly district action brought in original removal under district courts such defendants provided by action is and division jurisdiction, of the sued this O.f. Act
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 United State
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(d) (emphasis added).

See generally (Doc. No. Petition part, as follows: 2). for Removal Title 28 U.S.C. § 1446 Pursuant

- (a) A defendant or de any civil action a State court sha of the United State of removal division within which such action any civil action or criminal prosecution removal signed pursuant to shall file States defendants desiring for the in the district district is pending to and remove court from മ
- ule such defendant grounds containing a short and plain statement process, for 0f the removal, pleadings, Federal or defendants together with a Rules and orders Οfi in such Civil Procedure served upon action сору of О Н the and

28 U.S.C. § 1446 (a)

28 U.S.C. [fn26] § 1441 and See Petition 1446 for (Doc. No. Removal 2), Pursuant _ ш а С ω. to

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Result #17: Loislaw Federal District Court Opinions - TRAN v. WASTE MANAGEMENT, INC., (M.D.Fla. 2003)
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(Doc. [fn27] No. Peti 2), tion _ for $\boldsymbol{\omega}$ а † Removal N Pursuant to 28 U.S.C. § 1441 and

[fn28] Id.9 at

[fn29] Support gni See Memorandum generallyPlaintiff's О Н Law (Doc. Motion No. 10). t 0 Remand and

64818[fn30] Ω 99 generally Doc No 41

Ŋ **Ф** generally Doc No 4 4

2 Doc No. 44 م (1 7

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07 fn34] See udge's Re tiletifn35] Id. Filfn36] Id. Omitted). See Report Clark and Equipment Recommendation Company' 9 Ø Objections Remand (Doc. to No. Magistrat 50) a t N

Id._ \vdash ω († \vdash

 \sim Ø CT 1 $^{\circ}$ (internal quota tion marks

2n1fn37] Id ω ω \Box \sim emphasi ັດ uŢ the OTI ginal)

fn3 8 Id.р r N

fn39] See 28 U.S.C. § 636 (b) (1) (C) (2003)

fn40] Lac F1a. Oct. 696 F.2d 507, Oct. Lacy20, 512 <. 2000) (11th Apfel, Cir. (quoting 2000 U.S. 1990)). Jef. Dist. frey Ŋ Lexis ۲. State 21437 Bd.* О£ ω Educ.(M.D.

7√99558 7√9mitted). Id.at ω (emphasis added) (internal Q itati g

fn42] See ۲. $Q_{\mathbf{I}}$

fn43] See 28 U.S. .C. § 636 (b) (1) (C)

511 U.S. (11th [fn44] . 375, Cir. See 377 (1994); 1994) Kokkonen v. Burns Guardian ٧. Windsor fe InsIns.Co. $\mathcal{C}_{\mathcal{O}}$ of 31 F.3d 1092 Am.

u. 108-109 construed [fn45] Ø (1941); Ω Shamrock Oil narrowly; Burns, unce where ᠺ᠈ aint 31 F.3d at 1095 Gas the Corp. ຜ E R O plaintiff ₹. res ("[R]emoval Sheets, olved and Ħ 313 U.S. 100 favor defendant statutes Οf remand") are clash about (internal

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citations
                                                          Result #17: Loislaw Federal District Court Opinions - TRAN v. WASTE MANAGEMENT, INC., (M.D.Fla. 2003)
omitted).
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[fn46] (11th Cir. Russell Corp2001) (internal Am.Home citations and Assur. Co., 264 F.3d 1040, quotations omitted)

Broving 17 F.3d 1353, 1356 (11th [fn47] 1998); See the De exercise see also Perez V. AT&T Co., О Н Tapscott federal Cir. 1996) ۲. jurisdiction"). SM139 F.3d 1368, ("A removing Dealer Serv. 1373 (11th defendant Corp., ha ົດ the burden 0

tedera 1985) P[fn49] ederal Practice fn48] ("Wright 14 A Charles k٦ Miller"). and Wright, Procedure, Arthur [⊘] 3721 Miller a t 218-19 ષ્ટ્ર Edward (2d н. ed d Coop Ō

Cir. Tillman v. 2001) (citing **28 U.S.C. § 1441**(b)) RJ. Reynolds Tobacco,

ॣfn51] **4287** (11th Cir. See Triggs v. 1998) JohnCrump Toyota Inc154 F.3d 1284,

id.;

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Beaver,

fin52] See id.; otors **9**fn53] quotation omitted); uperceded by Corp., Triggs, 888 F.2d 779 (11th Cir. statute Oil Co., 709 F.2d 1433, 1440 (11th Cir 154 F.3d at 1287 (internal citation 1340-1341 (M.D. Fla. 1999). see on other also Tillman, grounds 1989). 253 F.3d at 1305 as stated and in 1983) Wilson ۲. Genera

⊗fn54] 53 F.3d at 1305 Triggs (accord) 154 F.3d at 1287; Tillman,

ᠺ᠈ omitted); Coker, evaluate internal citation omitted); see also Cabalceta v. fn55] . U Larmoyeux v. fraudulent favor and controlling 883 F.2d 1553, Fla. Crowe v. Coleman, Off all 1998) ("To the factual joinder, the Phillip Morris. plaintiff) 1561 (11th Cir. 1989) ("In addressing the 709 F.2d at 1440 issues law in determine 113 F.3d 1536, (internal district and questions favor of ("The district Inc., whether 1538 court the citation omitted); Montgomery 992 F. Supp. 1372, (11th Cir. plaintiff") O.fi should resolve court controlling should must 1374 Standard Frui 1997) (internal all quest substantive issue remanded, Ω ĊŢ cions ģ 7 law O.f.

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affidavits Cabalecta, [fn5 sue О Н Crowe 883 F.2d at 1561 raudulent and/or deposition 113 F.3d at 1538 joinder, (recognizing (internal transcripts) മ district that citation court in addressing omitted can consider the any submi

laintiff gudgment; Pfn58] Cro the need (internal standard not show & Larmoyeux, citation გ ე that much he 992 F. and quotations lighter"). can survive Supp. at a motion 13 75 ("Therefore omitted); for summary മ

Crowe, omitted) 113 F.3d at 1538 (internal citations and

(internal citation omitted)

quotations om properties of the property of at in deciding whether a cas obviously fraudulent and 992 F. Supp. at 1375 1542 (emphasis (recognizing added); case see frivolous should be that also മ Montgomery claims). district remanded μ. W limite to

ips, fn61] 1994 U.S. Coker, 709 F.2d at 1440; Dist Lexis 17541, see also Cheves ***** Մ (M.D. ₹. Fla. 1994)

hat the joinde gemoving party) Proving that the joinder of ₩oker, fn62] Cheves, 709 F.2d at 1440 (recognizing party); joinder the joinder of the 1994 U.S. of nonresident Montgomery Dist. & Larmoyeux, removing party Lexis defendants was fraudulent resident that the 17541, burden of defendant bears *5 '• See the burden was fraudulent") proving also rests 0 H g the

Gas follo remove മ case (recognizing from state that court the g burden of the basis proof falls 0 fi fraudulent noqu d he party seeking

follows: In that connection, Florida's Workers Compensation Act provides

damages from such employer The account other liability hird-party 40.10 liability and representative (shall ը. Թ 0 fi ũ anyone such from tortfeasor and to þе 0 0 f exclusive injury liabi an otherwise such employer employer thereof, .lity OK and enjoyed at law entitled prescribed in husband or wi the place t o employee, Уď any t o an The Off. recover in 9 employer all same Ø the

Result #17: Loislaw Federal District Court Opinions - TRAN v. WASTE MANAGEMENT, INC., (M.D.Fla. 2003) injured employee furtherance of the employer's employer when extend as well to each such is entitled employee დ Իemployee business and the acting receive 0f in benefits

Fla. Stat § 440.11(1)

this

chapter.

 $^{[fn64]}$ *Id.* (emphasis added)

ageogle6 Gourtney v. Florida Transformer, Inc., <u>549 So.2d 1061</u>, <u>1064-65</u> 191st DCA 1989) (same); Glaab v. Caudill, <u>236 So.2d 180</u>, <u>183-84</u> 1947 Pla. 2nd DCA 1970). **36**995) (066毛 fn65] (5th DCA 1991); Hoyt v. Corbett, 559 So.2d 98, 100 (4th So.2d 714 (Fla. (same), (internal citations and quotations omitted), Kline ₹. rev. Rubio, 652 So.2d 964, denied., 1995); Gerentin 559 So.2d 1278 965 (Fla. < McComb, (Fla. 3rd DC 586 So.2d 94, rev. 183-84 DCA denied,

fn66] Crowe ultimate merit of the plaintiff's remand context, ٧. Coleman, or frivolous claims"). the district court's 113 F.3d 1536, claim must be 1542 (11th authority to Cir. limited 1997) to checking look into for

&fn67] emand See Clark Equipment (Doc. No. 15), Ex. ш Company's a t 1-2 Opposition t o Moti . 0 t 0

ğuotations omitted). fn68] Crowe, 113 F.3d at 1541-42 (internal citations and

Sossibility that a same of action as Solution as Solution as Solution Crump Toyo fn69] Tillman v. R.J. Reynold: Guotations omitted). accord); Crone, John Crump Toyota, Inc. action against any 113 F.3d at 1538 (accord) a state R.J. Reynolds court would find that the 154 F.3d 1284, 1287 (11th Cir. one joinder is Of Tobacco, the (internal citations resident defendants); Triggs 253 F.3d 1302, proper if complaint there 1998) and exists states

Sefn70] parties in interest fn70] the on diversity of citizenship "shall See State 28 U.S.C. § 1441 in which such action is properly joined (b) (stating that and served brought"). Ьe an acti removable as g defendants only H H ū none 0f the

[fn71] Doc. No. 10, \P 22 at 8.

[fn72] **28 U.S.C. § 1447** (c).

Lexis [fn73] ω Smith *30 ۲. Health(M.D.Fla. CirFeb. Οf Lake <u>ს</u> 2003) City, (internal Inc.2003 citation U.S. Dis omitted);

http://www.loislaw.com/snp/fpopwind.htm (15 of 17)9/29/2005 1:51:30 PM

- also Martin < Mentor Corp., 142 F. Supp.2d 1346, 1349
- section is discretionary with the trial court") 2001) ("The award of attorney's fees and costs (internal under citat this
- under omitted); Butterworth v. 28 U.S.C. § 1447 (c) is completely discretionary") Lexis *14 (M.D. Fla. July 14, Chances Casino Cruises, 1997) ("The Inc., (internal award of 1997 U.S መ መ
- citation omitted); Liebig v. Dejoy, 814 F. Supp. 1074, 1077
- Section is completely witation omitted). (M.D. Fla. 1993) ("The award of attorney's fees and costs discretionary with the trial court") under (inte thi rnal
- (internal citation
- fin74] Martin, 142 F. Supp.2d at 1349 (mitted); Casciani v. La Cruise, 22913 * 15 (M.D. Fla. June 24, 1 Attorney's fees under § 1447(c) was June 24, 1998) (recognizing that Inc., not 1998 U.S. Dist. intended to эd while the Lexis routine "it award 0
- * 14 ("A without finding bad faith or other improper omitted); plaintiff Butterworth, 1997 გ Ի. not required to U.S. show bad
- Bow permissible . . . without contive") (internal citations of a defendant in the part of a defendant ees") (internal citation omitted); of a defendant in filing Liebig, 814 F. Supp. at 1077 for removal to obtain an award O fi t'h
- (internal no longer necessary as citations omitted). മ predi . ငရ .te to the
- **7.**2 fn75] Temphasis added) (internal iebig, 814 F. Supp. at 1077 (acc *iebig*, **814 F. Supp. at 1077** (accord). But terworth, 1997 U.S. citation Dist. and quotation Lexis 235 61 at omitted)
- **E**fn76] Removal is in Aurisdiction) See improper where Liebig, **814 F. Supp. at 1077** (noting മ federal court that lacks Notice subject matte O.F.
- fin77] Russell **5050** (11th Cir. Corp2001) ₹ (internal Am.Home citations Assurance and Co., quotations 264 F.3d 1040 omitted)
- **07/009**(fn78] Crowe ۲. Coleman, 113 F.3d 1536, 1542 (11th Cir
- **%**fn79] Liebig, 814 F. Supp. at 1077 (awarding just costs
- Sctual exp Sacking); 14 (awardi (awarding expenses see just costs, actual also Butterworth, 1997 U.S. Dist. Lexis and attorney fees where expenses, subject matter and attorney fees 23561 jurisdict at * where ion subj
- Commercial Workers Int'l Union, lacking); PublixSupermarkets, 900 F. Supp. 419, 422 (M.D. Inc. ۲. United Food Fla.
- († improper because federal subject matter jurisdiction Notice of Removal, Therefore, Defendants ("Although Defendant may have s d removal a matter of fairness, the actual the Court has already determined that removal 0 f this amount action" O H acted in good the expenses Plaintiff დ Իincurred entitled faith in filing is patently s D t O മ recover result lacking. was the О Н

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